

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NOS. 95-826-T, 95-827-T, & 95-854-T - ORDER NO. 96-115 ✓

FEBRUARY 21, 1996

IN RE: Applications of The Great American Trolley) ORDER
Co., Inc., 350 Wesley Street, Suite 904,) APPROVING
Myrtle Beach, SC 29577 (Mailing Address -) APPLICATION
821 Shunpike Road, North Cape May, NJ)
08204), for a Class A Certificate of Public)
Convenience and Necessity.)

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Applications of The Great American Trolley Company, Inc. ("Great American" or "the Company") for Class A Certificates of Public Convenience and Necessity over various routes in Horry County, South Carolina. Great American filed three separate Applications which were docketed in separate Dockets by the Commission Staff.

The Application in Docket No. 95-826-T requested a Class A Certificate of Public Convenience and Necessity to transport passengers over regular routes and schedules as follows:

BETWEEN CONWAY, SC AND MYRTLE BEACH, SC VIA US HIGHWAY 501.
RESTRICTED: TO 51 PASSENGERS.

The Application in Docket No. 95-827-T requested a Class A Certificate of Public Convenience and Necessity to transport passengers over regular routes and schedules as follows:

BETWEEN GEORGETOWN, MYRTLE BEACH, NORTH MYRTLE BEACH AND
LITTLE RIVER, SC VIA US HIGHWAY 17.
RESTRICTED: TO 51 PASSENGERS.

The Application in Docket No. 95-854-T requested a Class A Certificate of Public Convenience and Necessity to transport passengers over regular routes and schedules as follows:

BETWEEN SOCASTEE AND MYRTLE BEACH, SC VIA SC HWY. 707.

BETWEEN HORRY-GEORGETOWN TECH., GEORGETOWN CAMPUS AND GEORGETOWN, SC VIA US HWY 17.

BETWEEN GEORGETOWN AND CONWAY, SC VIA US HWY. 701.

BETWEEN CONWAY AND LONGS, SC VIA SC HWY. 905.

BETWEEN LONGS AND NORTH MYRTLE BEACH, SC VIA SC HWY. 9.

BETWEEN NORTH MYRTLE BEACH AND CONWAY, SC VIA SC HWY. 90.

BETWEEN THE INTERSECTION OF US HWY 501 AND SC HWY 544 AND SURFSIDE BEACH, SC VIA SC HWY 544.

The Applications were filed pursuant to S.C. Code Ann. §58-23-40 (1976).

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed Great American to cause to be published a prepared Notice of Filing regarding each Application in certain newspapers of general circulation in the area affected by the Applications. The Notices of Filing indicated the nature of the Applications and advised all interested parties desiring to participate in the proceedings of the manner and time in which to file the appropriate pleadings for inclusion in the cases. The Notices of Filing were duly published in accordance with the instructions of the Executive Director. Petitions to Intervene in each Docket were timely filed by Coastal Rapid Public Transit Authority ("CRPTA"). No other Protests or Petitions to Intervene were received by the Commission.

Thereafter, by Order No. 95-1411, dated August 7, 1995, the Commission consolidated these three Dockets for hearing purposes.

A public hearing was convened on December 12, 1995, in the hearing room at the offices of the Commission located at 111 Doctors Circle, Columbia, South Carolina. The Honorable Rudolph Mitchell, Chairman, presided. Great American was represented by L. Sidney Connor, IV, Esquire; CRPTA was represented by Emma Ruth Brittain, Esquire; and the Commission Staff was represented by Florence P. Belser, Staff Counsel.

Witnesses presented were Greg Marsi for the Applicant and Elvin Tobin for CRPTA. Counsel for CRPTA also requested that the Commission take judicial notice of certain testimony and exhibits from previous hearings involving Great American and CRPTA.

At the beginning of the hearing, counsel for Great American stated that Great American was withdrawing the Application in Docket 95-854-T and was proceeding only on the Applications in Docket Nos. 95-826-T and 95-827-T. The Commission accepts the withdrawal of the Application in Docket No. 95-854-T and will consider only the Applications in Docket Nos. 95-826-T and 95-827-T.

II. APPLICABLE LAW

1. S.C. Code Ann. §58-23-220 (1976) provides as follows:

The Commission may grant a certificate A in the following cases:

(1) To an applicant to operate in territory already served by any certificate holder under this chapter or any common carrier when the public convenience and necessity in such territory are not already being reasonably served by some other certificate holder or common carrier, provided such applicant purposes to operate on a fixed schedule and to comply with the

other provisions contained in Articles 1 to 11 of this chapter and the rules and regulations which may be made by the Commission respecting holders of this class of certificates; and

(2) To an applicant for a certificate to operate upon a regular schedule in a territory not already served by the holder of a certificate A, when public convenience and necessity in such territory are not being reasonably served by a certificate holder under this chapter or a common carrier; provided, that when such a certificate A is issued to an applicant over territory which is being served at the time such certificate is granted by the holder of a certificate B, the right of such applicant to operate under certificate A shall not begin until the expiration of the then license year of the holder of the certificate B and the holder of a certificate B shall be preferred in granting a certificate A over such route unless in the judgment of the Commission it would not be in the interest of the public service.

In either such case the existence of a railroad or other motor vehicle carrier in the territory sought to be served by the applicant shall not be considered by the Commission as good cause for refusing the application.

2. S.C. Code Ann. §58-23-330 (Supp. 1995) contains the grounds for issuance or denial of a certificate and provides, in relevant part, that:

[a]n applicant applying for a certificate or to amend a certificate to operate as a motor vehicle common carrier may be approved upon a showing based on criteria established by the commission that the applicant is fit, willing, and able to perform appropriately the proposed service. If an intervenor shows or if the commission determines that the public convenience and necessity is being served already, the commission may deny the application. ...

3. 26 S.C. Code Ann. Regs. 103-133(1) (Supp. 1995) sets forth the proof required to justify approving an application and states as follows:

1. For Common Carriers Applying for a Certificate of PC&N. An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service, provided however, if an

intervenor shows or if the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

a. FIT. The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T., SCDHPT and PSC safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.

b. ABLE. The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.

c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

4. "The doctrine of [public] convenience and necessity is a relative or elastic theory. The facts in each case must be separately considered and from those facts it must be determined whether public convenience and necessity requires a given service to be performed or dispensed with." State v. Carolina Coach Company, 260 N.C. 43, 53, 132 S.E.2d 249, 255 (1963).

5. "'Necessity' means reasonably necessary and not absolutely imperative." Id. citing State v. Southern Railway

Co., 254 N.C. 73, 79, 118 S.E.2d 21, 25 (1961). "...It is necessary if it appears reasonably requisite, is suited to and tends to promote the accommodation of the public." Id.

6. "The word 'necessity', within certificate of public convenience and necessity, is not used in the sense of being essential or absolutely dispensable but merely that certificate is reasonably necessary for public good."

Black's Law Dictionary, 6th ed. (1990) citing Alabama Public Service Commission v. Crow, 247 Ala 120, 22 So.2d 721, 724.

7. The South Carolina Supreme Court has held that while an intervenor's testimony that its business will be adversely affected by the increased competition produced by an increased number of motor carriers is relevant, such testimony "is not determinative and 'should not in itself defeat an application for additional service'." Welch Moving and Storage Co. v. Public Service Commission, 301 S.C. 259, 391 S.E.2d 556, 557 (1990), citing Greyhound Lines, Inc. v. South Carolina Public Service Commission, 274 S.C. 161, 166, 262 S.E.2d 18, 21 (1980).

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact and conclusions of law:

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Great American is a Delaware corporation which is currently operating over Commission approved routes in Horry County, South Carolina. Based on the standards contained in 26 S.C. Code Ann.Reg. 103-133 (Supp.1995), the Commission

finds and concludes that Great American has demonstrated that it is fit, willing and able to provide Class A motor carrier services in South Carolina. Specifically, Great American has demonstrated that it is "fit" by certifying that there are no outstanding judgments pending against it, by certifying and presenting testimony that it is familiar with and will comply with the regulation and statutes governing for-hire motor carrier operations in South Carolina, and by testifying that Great American has a satisfactory safety rating. (See, Testimony of Marsi and Applications.) Great American has shown that it is "able" by establishing that it has the equipment to provide the services for which it seeks authority and that it has insurance which meets Commission requirements. (See, Testimony of Marsi and Applications.) Great American has demonstrated its "willingness" by submitting its Applications for operating authority.

The Commission would also note that Great American is currently operating under previously issued Certificates of Public Convenience and Necessity (See, Testimony of Marsi) and that Great American has previously been found to be fit, willing, and able to provide motor carrier passenger service. (See, Commission Order No. 94-523 (June 7, 1994), issued in Docket No. 94-216-T; Commission Order No. 95-839 (April 10, 1995) issued in Docket No. 94-467-T; and Order No. 95-1580 (October 3, 1995) issued in Docket No. 94-664-T.)

2. As relating to Docket. No. 95-826-T, the Commission finds that the public convenience and necessity are being

served by existing services in the area. Docket No. 95-826-T contains the Application for the proposed route between Conway and Myrtle Beach along U.S Highway 501. Mr. Marsi testified that Great American wanted to serve this route due to the tourist destinations or attractions located on this route. According to Mr. Marsi, tourists would be attracted by the Myrtle Beach Factory Shops and the golf courses located along U.S Highway 501.

Mr. Tobin, testifying on behalf of CRPTA, testified that CRPTA currently is operating an approved route along U.S. Highway 501 between Conway and Myrtle Beach. Mr. Tobin testified that the Highway 501 route is CRPTA's busiest route and is the route that produces the most fare box revenue for CRPTA. Additionally, Mr. Tobin stated that CRPTA receives matching funds from subsidies for the fares collected along the Highway 501 route. Therefore, any reduction in revenues from the Highway 501 route would have a severe impact on CRPTA in that CRPTA would lose the actual amount of the revenues plus the matching funds. (See, Testimony of Tobin.) Hearing Exhibit No. 3, which contains CRPTA's schedules and route maps, indicates that CRPTA has up to fifteen (15) trips, each way, daily along the Highway 501 route during peak season. (See, Hearing Exhibit No. 3.) Additionally, Mr. Tobin testified that CRPTA is studying the need to add additional buses and to increase the frequency of the buses along the Conway to Myrtle Beach route. (See, Testimony of Tobin.) Mr. Tobin also testified that tourists comprise a

substantial portion of CRPTA's ridership and that CRPTA serves the tourist population year-round. (See, Testimony of Tobin.).

CRPTA also requested that the Commission take judicial notice of certain exhibits and testimony from the earlier Great American hearing (Docket No. 94-664-T) and from the CRPTA hearing (in Docket No. 95-905-T). One of those exhibits was a study of the public transit industry in the Grand Strand area conducted by Sheldon Crum of CGA Consulting Services, Inc. As part of the study, a ridership survey was conducted. The results of the ridership survey revealed that more survey responses were returned from the Highway 501 route than were returned from any other route. The ridership survey also revealed that an overwhelming majority of surveys were completed by non-tourists (81.2% of surveys from the beach area routes alone; 81.4% of all completed surveys) and that the majority of people riding the bus were riding the bus for transportation to and from work (68.8% of riders on the beach area routes alone; 67.8% of riders from all completed surveys).

Based on the totality of circumstances as contained in the record, the Commission concludes that the public convenience and necessity are being met with regards to the Conway to Highway 501 route. The majority of those who use bus service along the Highway 501 route are workers on their way to or from their jobs. Great American admitted at the hearing that it is primarily interested in the tourist

market, and the Commission notes that Great American already has authority to run along Highway 501 to Waccamaw Pottery (See, Order No. 95-1580, dated October 3, 1995), which is a major tourist destination. The Commission does not believe that it would be in the public interest to grant the entire Highway 501 route to Great American. The Commission believes that CRPTA has demonstrated that it is effectively serving the route. Furthermore, the Commission is concerned about the negative impact and harm that could befall CRPTA by approving a duplicate service over CRPTA's busiest route. Any loss of revenue from CRPTA's Highway 501 route could potentially harm the public interest by causing CRPTA to increase fares or to reduce service by CRPTA. Such a situation is not in the public interest, and the Commission therefore denies Great American's request for the Conway-Myrtle Beach route along U.S. Highway 501.

3. As relating to Docket No. 95-827-T, the Commission finds that the public convenience and necessity are not already being served by existing services in the area. As stated above, Mr. Marsi testified that Great American is primarily interested in serving the tourist market in the Myrtle Beach area and that Great American is interested in transporting tourists to various tourist destinations and attractions. (See, Testimony of Marsi.)

Mr. Tobin testified that CRPTA is serving a route from Georgetown to Myrtle Beach on a limited basis. According to Mr. Tobin, CRPTA is authorized by the Commission and by

County Council to run a Georgetown to Myrtle Beach route. However, Mr. Tobin also testified that CRPTA is operating along the Georgetown to Myrtle Beach route on a limited basis only.

Based on the record, the Commission concludes that the public convenience and necessity along the route from Georgetown to Myrtle Beach and on to North Myrtle Beach and Little River are not currently being met by existing services. The Commission therefore approves Great American's Application for approval of a route between Georgetown, Myrtle Beach, North Myrtle Beach, and Little River, S.C.

V. MISCELLANEOUS MATTERS

1. As previously stated herein, Great American withdrew its Application contained in Docket No. 95-854-T. The Commission accepts the withdrawal of the Application in Docket No. 95-854-T.

2. At the close of Great American's case, CRPTA made a Motion to Dismiss Great American's remaining Applications based on CRPTA's assertion that Great American did not satisfy the definition of a Class A motor carrier as contained in 26 S.C. Code Ann. Regs. 103-110 (Supp. 1995). CRPTA argued that Great American has ceased operations for the winter months and is not presently operating over its approved routes on regular schedules, therefore Great American is not a common carrier operating "over regular routes and upon regular schedules." The Commission disagrees. The Commission is aware from the testimony

presented at the hearing that Great American plans on operating from April through November during what is roughly the "tourist season" in the Myrtle Beach area. During those months of operation, Great American indeed operates over regular routes on regular schedules. The Commission believes that Great American is a Class A motor carrier and hereby denies CRPTA's Motion to Dismiss the Applications.

IT IS THEREFORE ORDERED THAT:

1. The Application of Great American contained in Docket No. 95-854-T is withdrawn from Commission consideration.
2. The Application of Great American contained in Docket No. 95-826-T for approval of a route between Conway and Myrtle Beach, S.C. via U.S. Highway 501 is denied.
3. The Application of Great American contained in Docket No. 95-827-T for approval of a route between Georgetown, Myrtle Beach, North Myrtle Beach, and Little River, S.C. via U.S. Highway 17 is approved.
4. Great American shall comply with all applicable statutes and regulations governing for-hire transportation in South Carolina.
5. Great American shall file the proper license fees and other information required by S.C. Code Ann. §58-23-10 to §58-23-1830 (1976, as amended) and by 26 S.C. Regs 103-100 to 103-272 (1976, as amended) within sixty (60) days of the date of this Order or within such additional time as may be authorized by the Commission.

6. Upon compliance with S.C. Code Ann. §58-23-10 to §58-23-1830 (1976, as amended), and the applicable provisions of 26 S.C. Regs. 103-100 to 103-272 (1976, as amended), a certificate shall be issued herein to Great American authorizing the motor carrier services granted herein.

7. Prior to compliance with the above-noted requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)